

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAMUEL WELLS,

No. C 19-2400 WHA (PR)

Plaintiff,

ORDER OF SERVICE

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION; KENNETH
EIFERT; ZAKARY EATON; D.
DEWS

Defendants.

INTRODUCTION

Plaintiff, a former California state prisoner, filed this pro se civil rights case under 42 U.S.C. § 1983 alleging that prison officials violated did not provide adequate care for his serious medical and dental condition. He is granted leave to proceed in forma pauperis in a separate order. For the reasons discussed below, the complaint is ordered served upon defendants.

ANALYSIS

A. STANDARD OF REVIEW

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.

1 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims
2 which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek
3 monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro
4 se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699
5 (9th Cir. 1990).

6 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the
7 claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the
8 statement need only "give the defendant fair notice of what the . . . claim is and the grounds
9 upon which it rests."" *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted).
10 Although in order to state a claim a complaint "does not need detailed factual allegations, . . . a
11 plaintiff's obligation to provide the 'grounds of his 'entitle[ment] to relief' requires more than
12 labels and conclusions, and a formulaic recitation of the elements of a cause of action will not
13 do. . . . Factual allegations must be enough to raise a right to relief above the speculative
14 level." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A
15 complaint must proffer "enough facts to state a claim for relief that is plausible on its face." *Id.*
16 at 1974.

17 To state a claim under 42 U.S.C. 1983, a plaintiff must allege two essential elements:
18 (1) that a right secured by the Constitution or laws of the United States was violated, and (2)
19 that the alleged deprivation was committed by a person acting under the color of state law.
20 *West v. Atkins*, 487 U.S. 42, 48 (1988).

21 **B. LEGAL CLAIMS**

22 Plaintiff alleges that his jaw injury, sustained following a dental procedure by defendant
23 Eifert, caused him pain and prevented him from being able to open his mouth enough to eat solid
24 food for approximately three weeks. His allegations that defendants Eifert, Eaton and Dews,
25 failed to provide him with a liquid nutritional diet during this time or other medical care to
26 address his hunger and pain are sufficient, when liberally construed, to state a cognizable claim
27 against the violation of his right under the Eighth Amendment to be free from cruel and unusual
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1 punishment.

2 Plaintiff makes no allegations against the California Department of Corrections and
3 Rehabilitation, which is not liable under a respondeat superior theory *Taylor v. List*, 880 F.2d
4 1040, 1045 (9th Cir. 1989), and in any event is immune from suit under the Eleventh
5 Amendment, *Brown v. Cal. Dep't of Corrs.*, 554 F.3d 747, 752 (9th Cir. 2009).

6 CONCLUSION

7 For the reasons set out above, it is hereby ordered as follows:

8 1. The claims against the CDCR are **DISMISSED**.

9 2. The clerk shall issue summons and the United States Marshal shall serve, without
10 prepayment of fees, a copy of the complaint with all attachments thereto, and a copy of this order
11 upon defendant **Dentist Kenneth Eifert, Registered Nurse Zackary Eaton, and Sergeant D.**
12 **Dews at San Quentin State Prison.** A courtesy copy of the complaint with attachments and
13 this order shall also be mailed to the California Attorney General's Office.

14 3. Defendants **shall** file an answer in accordance with the Federal Rules of Civil
15 Procedure.

16 4. In order to expedite the resolution of this case:

17 a. No later than **91 days** from the date this order is filed, defendants shall file a
18 motion for summary judgment or other dispositive motion. If defendants are of the opinion that
19 this case cannot be resolved by summary judgment, they shall so inform the court prior to the
20 date the summary judgment motion is due. All papers filed with the court shall be promptly
21 served on the plaintiff.

22 b. Plaintiff's opposition to the dispositive motion, if any, shall be filed with the
23 court and served upon defendants no later than **28 days** from the date of service of the motion.
24 Plaintiff must read the attached page headed "NOTICE -- WARNING," which is provided to
25 him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc), and *Klinge*
26 *v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988).

27 c. Defendants **shall** file a reply brief no later than **14 days** after the date of
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1 service of the opposition.

2 d. The motion shall be deemed submitted as of the date the reply brief is due. No
3 hearing will be held on the motion unless the court so orders at a later date.

4 e. Along with his motion, defendants shall file proof that they served plaintiff the
5 *Rand* warning at the same time they served him with their motion. Failure to do so will result in
6 the summary dismissal of their motion.

7 5. All communications by the plaintiff with the court must be served on defendants, or
8 defendants' counsel once counsel has been designated, by mailing a true copy of the document to
9 defendants or their counsel.

10 6. Discovery may be taken in accordance with the Federal Rules of Civil Procedure. No
11 further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16-1 is required
12 before the parties may conduct discovery.

13 a. If the claims found cognizable in this order involve excessive force,
14 harassment, or prison discipline, defendants have thirty days from the date of service of the
15 summons and complaint to produce to plaintiff all documents related to any incident reports,
16 investigations, or Rules Violation Reports that were generated as a result of the incident(s)
17 described in the complaint, and all video recordings of such incident(s). If no such reports or
18 video recordings were generated, or if no investigation occurred, defendants shall inform
19 plaintiff of this in writing;

20 b. If the claims found cognizable in this order involve medical care,
21 defendants have thirty days from the date of service of the summons and complaint to produce to
22 plaintiff his medical records related to his medical condition(s) alleged in the complaint and any
23 treatment he received for such condition(s).

24 Parties may object to the production of any of these materials. Any objections shall be
25 made in writing and served on all parties, but not filed with the Court. Any disputes regarding
26 the production of these materials shall be resolved according to the requirements of Federal Rule
27 of Civil Procedure 37 and Civil Local Rule 37.

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2 7. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the court
3 informed of any change of address and must comply with the court's orders in a timely fashion.
4 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to
5 Federal Rule of Civil Procedure 41(b).

6 IT IS SO ORDERED.

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8 Dated: July 11, 2019.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

NOTICE -- WARNING (SUMMARY JUDGMENT)

If defendants move for summary judgment, they are seeking to have your case dismissed. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

Rule 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact--that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says. Instead, you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in [current Rule 56(c)], that contradict the facts shown in the defendant's declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, your case will be dismissed and there will be no trial.